



King County Board of Ethics
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KING COUNTY BOARD OF ETHICS MEETING NOTICE

When: Monday, March 20, at 4:30 p.m.

Where: Bank of California Building
900 Fourth Avenue, 4th Avenue and Marion Street, Seattle
5th floor conference room (southwest corner of the building)

PLEASE NOTE CHANGE FROM USUAL MEETING LOCATION

AGENDA

1. ***Approval of Agenda***
2. ***Approval of Meeting Minutes of January 29, 2000 and February 22, 2000***
3. ***Request for Advisory Opinion.*** Councilmember Sullivan on Conflict of Interest
4. ***Meetings with Elected Officials.***
 - Establish plan to set meetings with Councilmembers
 - Future meeting dates with Executive and Council Chair
5. ***Board Goal #5: Review of Code of Ethics.*** Discussion of process and administrative support.
6. ***Enforcement of Financial Disclosure Requirement.*** Discuss and review draft code provision.
 - January 11, 2000 memo from Carl Johansen
 - February 15, 2000 memo from Carl Johansen
7. ***Appeal Hearing Process and Code Enforcement Responsibilities.*** Discussion.
8. ***Review of Provisions of the Code of Ethics.***
 - Continuation of Discussion
 - Request for advisory opinion directed to the Washington State Legislative Ethics Board regarding charitable fund raising by legislators.
9. ***Board Appointments***
 - Draft reappointment letter for Chair
10. ***Staff Report***
 - Annual Reception - please bring your calendars
11. ***Executive Session***

cc: Ron Sims, King County Executive
King County Councilmembers
Duncan Fowler, Director–Ombudsman, Office of Citizen Complaints
Sheryl V. Whitney, Director, DIAS
James J. Buck, Deputy Director, DIAS
Carl A. Johansen, Senior Deputy Prosecuting Attorney
Mike Alvine, Council Legislative Analyst
John Chelminiak, Council Chief of Staff
Tim Hatley, Executive Policy Advisor
Jeanne Keenan, Council Legislative Aide
Kristine Ottaway, Council Legislative Aide
Jeff Slayton, Council Associate Legal Counsel
Dave Regnier, Senior Deputy Prosecuting Attorney

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Minutes of the March 20, 2000 Meeting of the King County Board of Ethics

The March 20, 2000, meeting of the King County Board of Ethics was called to order by Chair Price Spratlen at 4:35 p.m. Board members in attendance were:

Lois Price Spratlen, Ph.D., Chair
Lembhard G. Howell, Esq.
Rev. Paul F. Pruitt
Margaret T. Gordon, Ph.D.,
Mr. Roland H. Carlson was absent

Others in attendance:

Ms. Catherine A. Clemens, Administrator, King County Board of Ethics
Mr. Carl A. Johansen, Senior Deputy Prosecuting Attorney
Mr. James J. Buck, Deputy Director, DIAS (arriving at 4:36 p.m.)
Mr. Duncan Fowler, Ombudsman (arriving at 4:37 p.m.)
Ms. Jeanne Keenan, Council Legislative Aide (arriving at 4:36 p.m.)
Ms. Shaunta Hyde, Executive Government Relations Liaison (arriving at 4:36 p.m.)
Mr. John Chelminiak, Council Chief of Staff (arriving at 4:43 p.m.)
Mr. David Regnier, Senior Deputy Prosecuting Attorney (arriving at 4:53 p.m.)

1. *Proposed Agenda.* Chair Price Spratlen requested to add an executive session as item #11, regarding the performance of a public employee and consideration of Board membership. No objection was made, and with that addition, Rev. Pruitt moved the approval of the proposed agenda; Mr. Howell seconded the motion and the agenda was approved.

Ms. Clemens asked for a moment in which to thank the members of the Board for their recent and thoughtful sympathy card and bouquet brought to her in the ethics office by Chair Price Spratlen. Ms. Clemens expressed her deep appreciation for the Board's support and understanding during the past months.

2. *Approval of Meeting Minutes of January 29, 2000, and February 22, 2000.* Rev. Pruitt moved to approve the January 29, 2000, meeting minutes; Dr. Gordon seconded the motion, and the minutes were approved. Mr. Howell moved to approve the February 22, 2000, meeting minutes; Rev. Pruitt seconded the motion, and the minutes were approved.

Chair Price Spratlen invited those in attendance to introduce them selves.

3. *Request for Advisory Opinion.* Ms. Clemens briefed the Board. Councilmember Cynthia Sullivan requested an advisory opinion from the King County Board of Ethics by letter dated February 15, 2000. Specifically, she requested an interpretation of the scope of the exclusion referenced in K.C.C. 3.04.030(R), as it relates to her spouse holding contracts for consultant work with King County. Chair Price Spratlen stated the request was of a general nature and that specific instances would aid the Board in making a decision. Mr. Howell stated that he did not see how the Board would be able to rule without explanatory situations. Upon request for his opinion, Mr. Johansen stated that the letter of request was ambiguous and not easily understood. Mr. Howell stated a conflict would exist if the spouse/consultant in question had matters before the council rather than if he were dealing with an individual county department. Mr. Johansen agreed, stating that the closer the contact, the greater the opportunity for conflict, particularly since Councilmember Sullivan presumably has 50% community property interest in her spouse's income. Dr. Gordon asked if Councilmember Sullivan could recuse herself? Yes. Mr. Johansen said that state law applies in situations whereby the contract approver has an interest and that Councilmember Sullivan should avail herself of the council's legal counsel.

Mr. Howell moved that, although the Board knows there is a prohibition on participating in a county action if the county employee or elected official has a conflicting personal or financial interest, the Board direct Ms. Clemens to communicate with Councilmember Sullivan and ask for specific information so that the Board may determine whether or not to issue an opinion on the matter. Rev. Pruitt seconded the motion and the motion passed unanimously.

4. *Meetings With Elected Officials.* Chair Price Spratlen emphasized the importance for Board members to meet and share information with elected officials. Developing relationships will help in the appointment process and to help county leadership have a sense of the Board and its activities. She urged members to volunteer to meet with the list of thirteen councilmembers prior to the annual reception tentatively scheduled in May. Ms. Clemens stated she would provide 'talking points' for board members prior to their meetings. Board members then volunteered to meet with various councilmembers, until all thirteen were paired with a Board member.

5. *Board Goal #5: Review of the Code of Ethics.* The Board discussed the type of process they envisioned for the systematic review of the Code of Ethics, an endeavor they adopted as their fifth goal at the January 29, 2000, retreat. They agreed that the process should be inclusive and that input at the beginning of the process was important. The Board directed Ms. Clemens to draft a list of potential invitees, including League of Women Voters, other ethics agencies, citizens, ethics activists, county employees and county management, since enforcement of the Code largely rests with management. The Board also directed Ms. Clemens to draft a public announcement to invite participation. Ms. Clemens informed the Board that she was in the process of communicating with three different public policy and political science academic units for the purpose of securing an intern to staff the process. The possibility exists that the intern might be funded by the Henry M. Jackson Foundation. Dr. Gordon asked about meeting structure and Dr. Price Spratlen suggested that be decided once staff resources are more certain.

6. *Enforcement of Financial Disclosure Requirement.* Mr. Johansen briefed the Board on two memos he prepared for their review: 1) January 11, 2000, Enforcement of Civil Penalties for Failure to Timely File Statements of Financial and Other Interests Under the Code of Ethics; and 2) February 15, 2000, a follow-up providing additional comments on that subject. The second memo suggests that one approach might be for the Board of Ethics to maintain records of filing compliance and then forward to the Ombudsman a list of those not in compliance within the time established by ordinance. Ms. Clemens noted that the ethics office already follows these established procedures. The departure would be for the Ombudsman to investigate, determine whether or not a late filing occurred, and determine a monetary fine, based on \$5 per day up to a total of \$300 total fine.

Ms. Clemens stated that, for filing year 1998, only one individual (not counting board and commission members) had not yet filed. Since the issue might be moot for that year, Mr. Johansen suggested this discussion might be part of the anticipated Code review. He also stated that it is not clear who could enforce and issue penalties. Legal advice from the Prosecuting Attorney's office now states that the Ombudsman is not allowed to provide this function. Chair Price Spratlen asked for any comments from Mr. Fowler. Mr. Fowler had no comments at this time. Chair Price Spratlen entertained a motion by Rev. Pruitt to table the issue of enforcement of the financial disclosure requirement until the Code review; Mr. Howell seconded the motion and the motion was unanimously approved.

Dr. Price Spratlen noted the Board's appreciation of Ms. Clemens for her work in the area of financial disclosure program management, through establishing cooperative relationships with county departments and setting the framework and foundation for success. Dr. Gordon asked if there was not a venue to let others know of the change in our financial disclosure program? Ms. Clemens stated that she would send notice to the COGEL newsletter, a publication that reaches an international audience of ethics agencies and professionals.

7. *Appeal Hearing Process and Code Enforcement Responsibilities.* Ms. Clemens introduced the agenda item and Mr. Fowler addressed the Board. Mr. Fowler stated that both the Office of Citizen Complaints—Ombudsman (OCC) and the Board of Ethics would benefit from a predictable appeals process. In the past, if the respondent withdrew his or her appeal, no hearing was held. Last December, the Board proceeded with the hearing despite the fact that the respondent withdrew his appeal. In review, Dr. Price Spratlen stated that she appointed Mr. Howell chair over the appeal process because of his legal background. Mr. Howell stated that his rationale in going forward with the appeal was based upon his experience. Also, there is a history of issues related to Board appeals both with past chairs and administrators. In addition, it is Mr. Howell's recollection that Mr. Holmquist, former Chief Deputy of the Civil Division, had stated that once the Board had the appeal, it was the Board's decision whether to dismiss or not.

Upon questioning, Mr. Johansen stated that, based on his research, there was no evidence the Board had taken action on appeals that had been withdrawn. However, in the Schmid appeal, the Board was given a stipulated motion to dismiss. That had never happened before, and therefore the Board now had an issue placed before them they felt required action. Also, the appeal hearing is held as a special meeting and may not be canceled without due notice. Whether they needed to conduct business related to the appeal is another issue. Mr. Johansen agreed with Mr. Fowler that it would be helpful to have procedures carefully spelled out in the rules regarding withdrawal of appeals.

Mr. Howell requested Mr. Johansen to locate the letter referencing appeal withdrawals from Mr. Holmquist, if one exists. Chair Price Spratlen stated that the Board should be consistent in its actions regarding appeals and should review past documents. Dr. Gordon stated that, regardless of the past, the Board needs to craft future rules based on values

that reflect our desire to encourage parties to resolve issues throughout the process. She asked the Board to adopt principles that encourage resolution.

Mr. Fowler stated that the Ombudsman's Findings were clear, well investigated and completely open. He stated that the respondent had been given opportunities to review and comment and offer new information if he wished. He did not offer new information until the findings were actually filed. Based on the new information, the OCC issued and filed revised findings. The first findings were removed, in part because the Ombudsman was not satisfied that both documents would be filed together in Records and Elections Division of King County. Mr. Howell stated that removing the first finding resulted in revisionist history. Mr. Fowler offered that the Board of Ethics is the appropriate office in which to file such documents and this change should be considered when reviewing the Code.

Mr. Fowler also stated that during the appeal hearing, he heard Mr. Howell state that office practices trump the Code of Ethics. He stated this puts the OCC in a difficult position since, in their investigation and in their findings, they use the Code of Ethics and past advisory opinions. Does that mean that if office practice is contrary, the Code and opinions are secondary? In the appeal under discussion, it would seem to be the case. Because the Council's office practice was contrary to the Code, the Board deemed the respondent not responsible. Mr. Howell stated that the Board of Ethics does not supervise the OCC, but found it unfair to single out one individual from a group that are all doing the same thing. However, the Board does not want the Code of Ethics overruled. Chair Price Spratlen stated that it was appropriate to use both the Code and past advisory opinions when conducting an investigation.

Mr. Howell moved that the Board's counsel and Ombudsman's counsel recommend changes to the Code of Ethics regarding filing requirements and designated filing location of findings from the Office of Citizen Complaints—Ombudsman. Dr. Gordon seconded the motion and the motion passed unanimously.

Mr. Howell moved that the Board's counsel and Ombudsman's counsel recommend changes to Board rules to address areas of concern regarding dismissal of appeals once those appeals have been made to the Board of Ethics. Rev. Pruitt seconded the motion and the motion passed unanimously.

8. *Review of Provisions of the Code of Ethics.* Mr. Johansen informed the Board that his continued research and investigation of other jurisdictions found no opinions regarding solicitation by elected officials that allow the latitude the Board is currently suggesting for King County. In addition, Mr. Johansen referred to a matrix of agencies and their responses to such issues, and he found no supporting advisory opinions whatsoever for elected officials using county resources to support direct solicitation efforts.

The Board then began a review of the six questions posed by six councilmembers regarding solicitation on behalf of charitable organization by elected officials.

Question #1: The invitation by councilmembers of persons or corporations who have interests that would be considered or affected by Council actions to attend fundraising events (such as breakfasts, luncheons, or dinners) to benefit charitable organizations. Dr. Gordon asked that the Board add "with a public purpose" to create a link to those activities and organizations that are in the county's interest. Mr. Howell disagreed. Dr. Gordon stated that many 501(C)(3) organizations may have underlying political agendas and may not be in the best interests of county government. After additional discussion, Mr. Howell moved that the Board response to Question #1 read as follows: The Board generally agreed that the public expected county elected officials to participate in community and civic activities. Board members concluded that soliciting donations and contributions for

charitable organizations fit within the "official duties" of county elected officials. Rev. Pruitt seconded the motion. Mr. Howell, Rev. Pruitt and Chair Price Spratlen voted 'yes'; Dr. Gordon abstained. The motion passed with three 'yes' votes and one abstention.

Question #2: The dissemination of information, regarding capital campaigns or other fundraising drives to benefit charitable organizations, by councilmembers to persons or corporations who have interests that would be considered or affected by Council actions. After discussion by the Board, Mr. Howell moved that the Board response to Question #2 read as follows: The dissemination of information does not raise issues under the Code of Ethics, as long as the information is purely informative. Dr. Gordon seconded the motion and the motion passed unanimously.

Because of the time and remaining issues to be addressed in this meeting, the Board agreed to table the remainder of the six questions until the next meeting.

9. *Board Appointments.* The Board reviewed the materials related to the status of Board members: Rev. Pruitt's and Mr. Carlson's terms are expired but they continue to serve, as is allowed by law; Mr. Howell and Dr. Gordon have been appointed but have not been confirmed by the council; Chair Price Spratlen's term expires in July, 2000. The Board reviewed the draft letter from members of the Board regarding the nomination for a third term for Dr. Price Spratlen as Chair. Dr. Gordon moved that the draft letter be approved and signed and forwarded to the Executive for appointment. Rev. Pruitt seconded the motion and the motion was passed unanimously.

11. *Executive Session.* At 6:36 p.m. the Chair requested that the meeting move into executive session for the purpose of discussing the performance of a public employee and consideration of board membership. The Chair announced that the executive session would conclude in 15 minutes.

At 6:43 p.m., the Board completed the executive session and resumed its regular meeting.

At 6:46 p.m., Dr. Gordon moved to adjourn the meeting; Mr. Howell seconded the motion; the motion was approved unanimously and the meeting was adjourned.

Approved this ____ day of _____, 2000 by the King County Board of Ethics.

Signed for the
Board: _____

Dr. Lois Price Spratlen, Chair